# In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-664

JOHN J. McDONOUGH, ET AL.,
PETITIONERS,
*v.*
TALLULAH MORGAN, ET AL.,
RESPONDENTS.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

## BRIEF FOR RESPONDENTS IN OPPOSITION AND SUPPLEMENTAL APPENDIX

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Blanchard Press, Inc., Boston, Mass. — Law Printers

## TABLE OF CONTENTS

## Table of Citations

### *Cases*







### *Other Authorities*

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Respondents Tallulah Morgan, et al., black parents and their children enrolled in the Boston public schools, oppose the petition for certiorari of John J. McDonough, et al., and the Boston School Committee.

## Question Presented

In view of the unconstitutional conditions and other problems at South Boston High School and the past conduct of school officials, was the district court's order placing the School in "receivership," with a senior school official as "receiver," an abuse of the court's equitable authority?

## Statement of the Case

This is a school desegregation case in which the petitioners (the five members of the Boston School Committee) are among the defendants and respondents (class representatives of all black students enrolled in the Boston schools and their parents) are the plaintiffs. On June 21, 1974, the district court held that the Boston system was deliberately segregated.[1] The system was partially desegregated in 1974-75 pursuant to a plan originally mandated by the Massachusetts Supreme Judicial Court.[2] Thereafter, a more comprehensive desegregation plan was implemented in 1975-76.[3]

The relief at issue here was entered following the respondents' filing, on November 18, 1975, of a detailed Motion for Further Relief Concerning South Boston High School, one of 18 high schools and 157 total schools in the Boston system. (A. 1-12)[4] This motion, in part, (a) alleged that since the commencement of desegregation in 1974-75, "black students attending South Boston High School [had] been subjected to conduct interfering with their right to

[1] *Morgan* v. *Hennigan*, 379 F.Supp. 410 (D. Mass.), *aff'd*, 509 F.2d 580 (1st Cir., 1974), *cert. denied*, 421 U.S. 963 (1975).

[2] *Morgan* v. *Hennigan*, *supra*, 379 F.Supp. at 484.

[3] *Morgan* v. *Kerrigan*, 401 F.Supp. 216 (D. Mass., 1975), *aff'd*, 530 F.2d 401 (1st Cir., 1976), *cert. denied sub nom. Morgan* v. *McDonough*, 44 U.S.L.W. 3719 (6/14/76).

[4] The Appendix filed with the Petition is cited A.



a peaceful, desegregated education and threatening their physical safety," and (b) sought "an urgent evidentiary hearing" on the need to close the School and relocate its student body. (A. 1, 3) Recognizing the emergency nature of the matter, the district court scheduled hearings which commenced on Friday, November 21, 1975, continued on November 22, 24, 25 and 26, and concluded with oral argument on November 28.

At the outset of the hearing, the district court denied those parts of respondents' motion seeking to add as defendants certain teaching personnel at South Boston High School. (A. 1, 2, 20, 22) The court also indicated that the purpose of the hearing was to determine "whether the desegregation plan is being implemented . . . at South Boston High School." (A. 22)[5]

The district court ruled on December 9, 1975 (A. 19-44 bench ruling; A. 55-57, written order; see A. 90-109, supplemental findings), finding "that, generally speaking, the plaintiffs proved the allegations in their motion." (A. 20) The district court placed South Boston High School in what it termed the "temporary receivership of the court," although the person initially designated receiver was the Community District Superintendent normally having supervisory responsibility for the School; and this official was later replaced by the Superintendent for the system, a defendant in the main case. (A. 55, 177)[6] The receivership

[5] Petitioners erroneously state that respondents' motion was denied in its entirety at the outset of the hearing. (Petit., p. 6) In fact, the district court did not rule on most parts of respondents' motion. (A. 1, 2, 20, 22).

[6] The question of receivership was not new to the district court or the parties. In June, 1975, the United States Commission on Civil Rights held hearings on the first year of desegregation in Boston. The Commission issued its report in August, 1975. See "Desegregating the Boston Public Schools: A Crisis in Civic Responsibility." The Commission found that the Boston School Committee "ha[d] refused to take affirmative steps necessary to

was to accomplish as soon as feasible "such changes in the administration and operation of South Boston High School as [were] necessary to bring the school into compliance" with the court's desegregation plan and other remedial orders. (A. 55)

The district court also entered orders, *inter alia,* providing for the receiver to (1) replace the administrative staff and football coach, (2) evaluate and possibly replace other staff, (3) file a renovation plan, (4) make efforts to enroll students who had not been attending and begin catch-up classes, and (5) report on certain provisions of the plan. (A. 55-57) The exclusion of the petitioners from the remedy was based in part upon "the history of [the] proceedings" which convinced "the court [that it could] expect no assistance from the school committee as presently constituted." (A. 109)

The court of appeals on August 17, 1976, affirmed the challenged orders[7] in all respects. (A. 176-191) Judge Campbell's opinion concluded that the School was subject to "extraordinarily difficult and troubled circumstances" and that there was "a grave threat to the desegregation plan and to the safety and rights of the black students. . . ." It held that the relief did not go "beyond what might reasonably be considered necessary. . . ." (A. 176, 179) The appellate court noted that based upon past events the

desegregate Boston's public schools successfully" (p. 52), and that "[i]f the School Committee fails to take such actions, the [district] court should consider placing the Boston public school system in receivership." (p. 63) Thereafter, at the direction of the district court, the petitioners, respondents, and other parties made lengthy filings analyzing the factual and legal issues relating to receivership. See "Plaintiffs' Memorandum on Receivership," September 26, 1975; "Memorandum of the Boston School Committee Relative to the Recommendations of the Civil Rights Commission," September 26, 1975; "Rebuttal Brief of the Boston School Committee," October 10, 1975.

[7] The appeal included orders relating to repairs (A. 190-91) as well as the original December 9, 1975, orders.



district court "had reason to fear that even direct orders to [the] Committee would . . . be met by resistance, subterfuge, or at very least, delay." (A. 187)

Certain claims and orders mentioned in the Petition have either not been preserved for review, or are not ripe for treatment by this Court. Petitioners did not present to the court of appeals any claim concerning the timing or form of the hearing on respondents' motion concerning South Boston High School (Petit., pp. 5-6), or views taken of South Boston High School by the district court (Petit., p. 8, n.7). Appeals from later orders concerning South Boston High School are pending in the court of appeals. (A. 145, 172, 192, 194; Petit., p. 10)

## Argument

### I. The Petition Does Not Establish a Basis For Review Under Supreme Court Rule 19.

The orders challenged here resulted from an interaction of two factors: intolerable interference with the right of black students peacefully to attend South Boston High School as part of a comprehensive desegregation plan, and the petitioners' "default".

The opinions below portray a tragic situation at South Boston High School. Black students were assaulted and subjected to racial epithets within the School, and disciplined for defending themselves. (A. 4-5, 20-21)[8] The School handbook and personnel assignment continued the School's identification as white (A. 180) and there was racial discrimination in an extracurricular activity. (A. 25-26, 180) The suspension rate was the highest in the system and

[8] For the most part, the district court's factual findings were made by reference to the particular paragraphs of respondents' motion concerning South Boston High School. See A. 20-22.

attendance almost the lowest. (A. 95-97) The administrative staff did not enforce particular court orders [see *Morgan* v. *Kerrigan, supra,* 401 F.Supp. at 225, 251 (prohibitions on racial epithets, in-school segregation and discrimination in extracurricular activities; see also p. 65, infra and A. 4-5, 20-21, 181) ], or, more generally, provide effective leadership. (A. 182-83). The faculty rebuffed offers of assistance, with the headmaster's acquiescence. (A. 182-83). Concomitantly, the educational program was adversely affected. (A. 92-94, 183) The characterization of the situation by the defendant members of the Massachusetts State Board of Education, quoted by the court of appeals, is apt: ". . . Black students were being driven from the school by conditions there. . . . The denial of constitutional rights, while from more complex sources, was becoming as effective as if blacks had been barred from entering the school." (A. 183-84)

Petitioner's default is illustrated by their approach to this matter. In the district court they first sought a 30-day delay despite the emergency depicted by the allegations (A. 16), and widely known in the community. (A. 179) Then, at the close of the proof, they offered no suggestions for improving the situation, arguing instead that respondents' (black parents' and students') motion for relief reflected "a well-coordinated effort" of students, black community leaders and attorneys to close South Boston High School, rather than a reaction to what had occurred (see pp. 53-54, *infra*),[9] a claim for which the district court found "not a scintilla" of support. (A. 28-30) The court of appeals rejected petitioners' argument that the district court had "overreacted," noting: "It was not necessary to show the school was 'burning down,' as counsel for the

[9] Certain underlying documents not contained in the Appendix filed with the Petition are appended to this brief beginning at page 28.



Committee suggested in oral argument, to show a need for judicial action." (184-85) As detailed below, this tack continued the pattern faced by the district court since its liability finding on June 21, 1974, a pattern characterized by the court of appeals as manifesting "resistance, defiance and delay." (A. 186-87)

The opinion of the court of appeals (A. 176-191) is a complete refutation of the petition. It demonstrates that the challenged actions, affecting one school, are the epitome of a district court's "exercis[ing] . . . [the] traditional attributes of equity power" to "[solve] . . . varied local school problems." *Brown* v. *Board of Education,* 349 U.S. 294, 299-300 (1955). Furthermore, respondents submit, the district court's orders were carefully tailored to address the particular problems in South Boston High School revealed by the evidence.

The use of the term "receivership" to describe the relief may well suggest more than is actually involved. The "receivers" have been superintendents in the system, not outsiders. Given the normal division of responsibility in the system — *i.e.,* the superintendent and other administrators submit proposed plans and nominees to the petitioners for approval — the impact of "receivership" was simply to exclude the School Committee from this approval function as to one school. Moreover, given the nature of the remedial steps required, the exclusion operated as to matters in which the Committee had previously defaulted and obstructed. See pages 16-19, *infra.*

Nor did the challenged ruling infringe on valid federalism concerns. The Massachusetts State Board of Education, which has long struggled to secure Boston's compliance with state elgislation requiring racial balance (pp. 18-19, *infra*), supported the district court's actions in the court of appeals (see A. 183-84). To vest Boston's own Superintendent of Schools with the power to remedy unlaw-

ful conditions was less intrusive than multiplying detailed court directives and contempt proceedings.

The Petition wholly fails to establish a basis for review under Rule 19 of this Court. There is no conflict in the circuits. The argument (Petit., pp. 18-19) that review by this Court will provide guidance for other situations ignores the unique combination of intolerable conduct affecting one school and official default which produced the contested orders. Furthermore, these orders do not, as petitioners assert (Petit., pp. 13-14), conflict with decisions of this Court concerning local control of education. This Court's precedents establish that district courts are empowered to redress infringement of the right of black students to a racially non-discriminatory education, piercing the veil of local control insofar as necessary. In summary, this matter involves exceptional circumstances affecting one school, not a recurring problem warranting review by certiorari.

## II. The District Court's Orders Were, in the Circumstances, an Appropriate Exercise of Its Equitable Authority.

### A. *The Conditions at South Boston High School*

South Boston High School was before desegregation an almost entirely white school (in 1972-73, one of 2200 students and two of 132 faculty members were black). (A. 179) Intentional segregatory practices created and maintained the School's racial identifiability. *Morgan* v. *Hennigan, supra*, 379 F.Supp. at 426, 427, 438, 440-49, 459-60, 463-66, 468-69, 471-73 (subsequent history omitted).

With the commencement of desegregation in 1974-75, "there was tension, disruption, violence and poor attendance. Black students were often the targets of racial slurs and, on occasion, physical abuse." (A. 179) The



testimony of two black teachers at a hearing on December 13, 1974, reflected: frequent instances of white students roaming through the building chanting "niggers eat shit" (see pp. 31-32, *infra*); the promotion of disruption by white adults allowed in the building during the school day (see pp. 33-35, 37, *infra*); and segregated student meetings within the school (see pp. 28, 30, 35-36, *infra*). "Police in large numbers were on hand from the second day of school in September, 1974; . . ." (A. 179) The district court, on three occasions, entered orders designed to safeguard the safety of students and to prevent racial epithets from igniting violence. (A. 11, 22)

During 1974-75, certain organizations successfully promoted school boycotts in South Boston in violation of state law (Mass. Gen. Laws, ch. 76, §4) in a widespread and open manner. Despite a statutory obligation to act against persons inducing truancy (Mass. Gen. Laws, ch. 77, §13), petitioners did not do so. The district court found that this "created a climate in which more serious violations of law were likely to occur, and have occurred." (A. 10-11, 21-22)

The opinions below paint the following picture of "the extraordinarily difficult and troubled circumstances confronting the school in the fall and early winter of 1975. . . ." (A. 176-77):

*Physical Mistreatment of Black Students Within the School*

The district court found (A. 21):

> Black students in South Boston High School have been subjected to physical attacks by groups of white students. One or two black students have sometimes been attacked by a much larger group of white students

> without provocation. School and police authorities have detained and suspended all the black students involved in the incident, but only one or two white students. Black students have sometimes been disciplined for defending themselves from an unprovoked attack, while numbers of the white attackers escape any disciplinary measures.

One teacher reported that on October 17, 1975, "[a]t 8:10 a.m. approx. twenty (20) white male students entered my homeroom, #115, and physically attacked three (3) black students. . . ." See pp. 63-64, *infra*. A second teacher reported a white student's striking a black student "over the head with a chair" during a class, without apparent provocation, on November 14, 1975. See pp. 62-63, *infra*.

*Racial Epithets Within the School*

The district court found (A. 4-5, 20-21):

> Despite [the] ban on the use of racial epithets within the schools, black students in South Boston High School continue to be subjected to verbal abuse.[10] In addition to familiar racial slurs, white students this year have employed the chant "2, 4, 6, 8, assassinate the nigger apes." . . . During the changing of classes, groups of white students frequently sing "bye, bye, blackbird" and "jump down, turn around, pick a bale of cotton." The white student caucus of South Boston High School also issued a list of demands which included the demand that music be played over the

[10] As a result of a district court order of December 17, 1974, concerning security (see p. 65, *infra*), "[t]he student code of discipline [had] been amended to prohibit the use of racial epithets to antagonize others." *Morgan, supra*, 401 F.Supp. at 225. Footnote added.



> school's public address system during the changing of classes for the express reason that "music soothes the savage beasts." . . . [There have been] a number of instances in which school staff and police authorities stationed inside the building have heard such remarks and chants but have failed to take any corrective or disciplinary action. . . .

"An elaborate reporting system was set up for the reporting of non-violent racial incidents such as racial chants and slurs; but nothing was done about the reports." (A. 106)

*In-School Segregation*

There was substantial segregation of students within the school, in classrooms, the cafeteria, and detention rooms (A. 181), despite the prohibition of the district court's desegregation order. See *Morgan, supra,* 401 F.Supp. at 251. "There [was] no administrative policy as to seating arrangements in classrooms, the matter being left up to the individual teacher. . . ." When a black student sat at a table in the cafeteria with white students, the headmaster viewed it is a provocative act. (A. 100-01)

*The Continued Racial Identifiability of the School*

While many black students were assigned to South Boston High in 1975-76, school department actions and policies maintained its identification as a white school. "All administrative personnel, assigned to the main building, approximately 45 persons, were white" as were 93 of 100 teachers. (A. 180) The handbook distributed to all students and parents "portrayed the School as if white, ignoring its newly integrated status." (A. 180; see 97-98)

*The Football Coach, the Faculty and the Headmaster*

"The football coach had purposely maintained a white team, and failed to fulfill his affirmative court-ordered obligation to desegregate the team and conduct himself in a non-discriminatory fashion." (A. 181) The coach removed black players from the team on "the first available pretext." (A. 25-26)[11]

"In October, 1975, in response to increasing tensions at the School, the Superintendent's office and the court-created Citywide Coordinating Council sought to send assistance teams into the School. The faculty, however, voted not to cooperate with either group, and the headmaster acquiesced. During the faculty meeting at which one of these proposals was discussed, statements by black teachers about problems at the School drew contradictory comments from white teachers, to the accompaniment of loud applause and cheers of approval. The president of the faculty senate testified that he had neither read nor seen the court desegregation plan and that he knew of no discussions by the faculty of the court-ordered Racial-Ethnic Parent Councils and their student counterparts. Thus, the court had doubts whether, as presently constituted, the faculty intends to act as a unit to promote implementation of the court's desegregation plan at South Boston High School." (A. 181-182; footnote omitted)

"In general, while the court judged the headmaster to be well-intentioned, it found there was insufficient exercise of leadership to counteract the adverse attitudes in the School and to remedy the problems attendant on implementation of the . . . plan." (A. 183) The failure to act to counteract in-school segregation, the failure to enforce the prohibi-

[11] The desegregation plan provided: "All extracurricular activities and athletic programs shall be available and conducted on a desegregated basis." *Morgan, supra,* 401 F.Supp. at 251.



tion against racial epithets, the disciplining of students for defending themselves, the content of the student handbook, the failure to implement the complaint system, and the non-responsiveness of the faculty have been cited above. In addition, the lower courts found the headmaster to be resigned to the problems facing the school and the subordinating of educational to security concerns. (A. 182)[12]

*Enrollment, Attendance and Suspensions*

"The morale of the School was mirrored in its dismal attendance figures." (A. 183) The 891 students who had enrolled in the main building as of October 17, 1975, "comprise[d] but 70% of the 1280 students initially assigned . . ., the lowest percentage of projected student enrollment actually enrolled at any high school in the city." Daily attendance in the main building was usually only 60% of actual enrollment, "a figure lower than any district high school, lower than all but Boston Trade High School, and substantially below the citywide figure of 86%." Understandably, in view of the court's other findings, black attendance was particularly low, 44%, 34% and 47% of enrollment on sample days. (A. 95-96)

In contrast, suspensions were extremely high, comprising nearly 49% of all suspensions in the system's 18 high schools in September-October, 1975. The suspension rate for all high school students was 47 per 1000 students; at the two South Boston High buildings it was 357/1000 and 297/1000. (A. 96-97)

[12] The district court cited literature on the importance of the principal in a desegregating school. (A. 42-43) The August, 1975, report of the United States Commission on Civil Rights, note 6, p. 3, *supra,* concluded in part that "schools in which the desegregation process had gone reasonably well . . . are characterized by (strong) administrators who planned ahead and who were both consistent and positive in their policies." (p. 30)

### *The "Prison-Like" Atmosphere and the Educational Program*

The district court found security personnel (police and aides) omnipresent, and the concern for security pervasive. (A. 94-95) When 540 students were in attendance in the main building, 90 state policement and approximately 42 transitional (security) aides were on duty *inside* the building. (A. 92)

The prison-like atmosphere created by the metal detectors through which students must pass when entering the school, the presence of so many personnel responsible for safety, and the problems summarized above, had a predictable, adverse impact on the educational program. (A. 92, 93-94) The depth of the problem was illustrated by the testimony of Headmaster Reid about the lack of an affirmative response by the student body to a nationally known, integrated singing group: "The fact that we had the assembly at all was a major achievement." (A. 108)

• • •

Immediate remedial action was required. The district court observed: "The need for a change in administration at South Boston High School was, in my opinion, urgent, very urgent. Attendance there has been declining at such a rate that if the Court did not step in and take action, in my opinion there would not be much left at South Boston High to keep open if the matter were permitted to go on without drastic change." (A. 87) The brief on appeal of the Massachusetts school authorities, adopted by the court of appeals, stated: "Black students were being driven from the school by conditions there . . . . The denial of constitutional rights, while from more complex sources, was rapidly becoming as effective as if blacks had been barred from entering the school." (A. 184)



### B. *The Conditions Outside the School*

The low black attendance and problems within the school were also attributable in part to events outside the School. On the first day of desegregation in 1974-75 many school buses transporting black students and teachers were stoned in South Boston. Some students and teachers were cut and many buses damaged. (A. 8, 21) As their buses passed through South Boston, black students were sometimes faced with "chants such as 'niggers eat shit' and the mimicking of a monkey." (A. 9, 21) As of December 1975, "[r]acial slurs [were] painted on the pavement at most street intersections near the school." (A. 99)

"Inflamatory leaflets, distributed to white students on their way to school, promoted racial tensions within the School." (A. 184) One leaflet addressed "To All the White Kids in All the Southie Schools" read in part as follows:

> WAKE UP AND START FIGHTING FOR YOUR SCHOOL AND TOWN. IT'S TIME YOU BECOME THE AGGRESSORS . ... DON'T BE SCARED BY THE FEDERAL OFFENSE THREATS. A FIGHT IN A SCHOOL ISN'T A FEDERAL OFFENSE . . . BE PROUD YOU ARE *WHITE* & FROM SOUTHIE AND SHOW EVERYONE THAT THIS IS HOW YOU ARE GOING TO KEEP IT NO MATTER WHAT.

Another, addressed to the white football players, stated:

> They make fools out of you by FORCING you to accept a Black Assistant Coach which is part of their plan to take our school. But worse than that you make fools out of Southie and you don't care. If you cared at all or had any Balls you would demand they get rid of the Black Coach and you wouldn't play until they did . At least you'd be doing your part. (A. 99)

Copies of leaflets were brought into the school. (See p. 51, *infra*)

Racial mistreatment in South Boston was not limited to black students. Black teachers were harrassed before the start of the 1974-75 school year. Many black persons were indiscriminately subjected to violence. In one such incident, a mob attack on an innocent passerby resulted in a federal court conviction of one of the perpetrators. See A. 9-10, 21 and *United States* v. *Griffin*, 525 F.2d 710 (1st Cir., 1975).

### C. *The Basis for Excluding the School Committee from Participating in the Remedy*

The challenged relief excludes the School Committee from participating in the remedy for the problems at South Boston High School. The district court did this because "[a]ffirmative action and imaginative initiative [will be] required" to resolve the situation (A. 107) and "[o]n the basis of the history of these proceedings, the court can expect no assistance from the school committee as presently constituted." (A. 109) The court of appeals agreed, stating that "[t]he [district] court had reasonable cause . . . to discount the likelihood of effective cooperation. It also had reason to fear that even direct orders to [the] Committee would, as in the past, be met by resistance, subterfuge, or, at very least, delay."

These conclusions on the School Committee's performance were firmly rooted in the record of the Committee's response to this issue,[13] and generally:

Following its ruling that the system was deliberately segregated, the district court on October 31, 1974, entered an order providing for the petitioners' filing of a comprehensive pupil desegregation plan. The order set forth

[13] See pp. 6-7, *supra*.



criteria and established a filing deadline of December 16, 1974. The system thereafter filed progress reports on plan development. However, on December 16, three of the five School Committee members refused to submit a plan prepared by the school department staff, promoting a civil contempt adjudication by the district court. See *Morgan* v. *Kerrigan, supra,* 401 F.Supp. at 225-226; 509 F.2d 618 (1st. Cir. 1975) (denying stay).

On January 7, 1976, the district court found that the contemnors had purged themselves by directing their staff to prepare a new plan to be filed later in January. 401 F.Supp. at 226. When filed, however, this plan was essentially a freedom of choice plan which the district court rejected. See 401 F.Supp. at 228-229. On appeal, the court of appeals found the system plan so clearly inadequate that "if the district court had accepted the January 27 plan, [the court] would have been constrained to reverse." 530 F.2d at 409. The appellate court viewed "it [as] inconceivable that anyone, the School Committee members or the court, could believe that the plan would be effective. . . ." 530 F.2d at 410.[14]

At the contempt hearing, the three Committee members expressed an intention "to obey lawful orders of the Court," but stated in writing that they would take "no initiative or affirmative action to advocate or supplement a plan which in conscience and principle" they opposed. (A. 109; 530 F.2d at 427) During testimony at the contempt hearing, one member stated: "To begin with, I have always complied with the orders of this Court. I intend to do so in

[14] The court of appeals quoted the then chairman of the Committee, who remarked before the vote: "The plan is 'pie in the sky.' It is a contradiction, it is impossible. All of us would love to see a voluntary desegregation system put into effect. It is not a practical reality. Of course, I will vote for this." 530 F.2d at 410, n.11.

the future, but if you ask me to go one step beyond where you direct me, I will not take that step." See p. 39, *infra*.

The district court found that the Committee members had "lived up to their pledge" of no affirmative action. (A. 109) The court of appeals has referred to "an intransigent and obstructionist School Committee majority" which "engaged in a pattern of resistance, defiance and delay." See A. 187, n.7; 530 F.2d at 427.

The conduct of the School Committee upon which the courts below based their conclusions included the following additional matters: (1) failing to appoint two full-time assistants for minority recruitment as required by a remedial order on hiring discrimination; see 388 F.Supp. 581, 584; see pp. 40-41, *infra*; (2) failing to make timely filing of a plan implementation schedule; see 401 F.Supp. at 270; see pp. 41-43, *infra*; (3) failing to make timely appointments of three district superintendents; 401 F.Supp. at 211; see pp. 43-46, *infra*; (4) voting on July 25, 1975, to hold "any further expenditures by the School Department for purposes of school desegregation . . . until they are approved by a specific order of Judge Garrity's court by a budgetary classification designation"; see pp. 46-47, *infra*; (5) recognizing the need for a department to coordinate plan implementation and then opening this office without regular status or funding, which "left [it] slowly twisting in the wind" (A. 33-36); (6) defaulting on the need for addressing security concerns (A. 30-33); See also *Morgan, supra*, 530 F.2d at 430 (obstruction in developing student assignment process).

The School Committee's performance in the federal forum mirrored its earlier obstruction of the Massachusetts Racial Imbalance Act. The Massachusetts Supreme Judicial Court has referred to "years of inaction and delay by the Committee. . . ." *School Committee of Boston* v. *Board of Education*, 302 N.E. 2d 916, 924 (S.J.C., 1973). The district court's liability opinion sets out the details. *Morgan, supra*, 379 F.Supp. at 418-20, 430-31, 440-41, 452-55, 477, 479-80. On March 22, 1974, a Single Justice of the Supreme Judicial Court found that Committee submissions on implementation "manifest[ed] a continued attempt to delay implementation of the Plan" and that its conduct "gives reason to doubt whether the committee, unless expressly ordered by the Court to do so, will reasonably comply . . . ." See pp. 60-61, *infra*.



### D. *The Receivership Order Was, In The Circumstances, an Appropriate Exercise of the Court's Equitable Authority.*

In attempting to resolve the grievous situation at South Boston High School, the district court was authorized to employ the full range of equitable powers. *Hills* v. *Gautreaux*, 44 U.S.L.W. 4480, 4484 (1976); *Brown* II, *supra*, 349 U.S. at 299-301; *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15-16 (1971). Receivership is one recognized equitable remedy. See Fed.R.Civ. P. 66; *United States* v. *American Tobacco Co.*, 221 U.S. 106, 186 (1911); *Turner* v. *Goolsby*, 255 F.Supp. 724, 730-31 (S.D. Ga., 1966) (3 Judge Court) (appointing state superintendent as receiver of school system in desegregation case).[15] Furthermore, relief must realistically promise to work effectively and promptly. *E.g., Green* v. *County School* Board, 391 U.S. 430, 439 (1968).

On the facts of this case, the imposition of what the district court termed a "receivership" was a correct application of these remedial principles.

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[15] See also A. 186, citing cases; J. N. Pomeroy, 4 *Treatise on Equity Jurisdiction*, §§1330-36 (S. Symons, ed., 1941); R. Clark, *A Treatise on the Law of Receivers* (3rd ed., 1959) ("after judgment receivers" are discussed at pages 346-359).

The conditions at South Boston High School were constitutionally intolerable. After more than a year of desegregation, black students were subject to physical attack, exclusion for defending themselves, and racial epithets. There was in-school segregation, the staff composition continued to identify the school as white, the student handbook was written as if black students had not arrived, and there was discrimination in an extracurricular activity. As a consequence, the educational program was adversely affected and a prison-like environment created. Enrollment and attendance figures revealed that black students were being driven from the school. Nevertheless, the faculty rebuffed offers of assistance and the headmaster seemed resigned to the situation.

The district court reasoned that "[a]ffirmative action and imaginative initiative" would be required to address these problems, that it could not, based upon prior events, expect such assistance from the School Committee (A. 107, 109), and that what it termed receivership was therefore necessary. The court of appeals agreed. (A. 186-87)

The record amply supports these conclusions. Only the most affirmative of "affirmative action" could produce even a hope of resolving the problems at South Boston High School. No such effort could be expected from the School Committee. Its members had, *inter alia,* refused to file a plan and, after a contempt adjudication, filed a plainly inadequate plan; made late filings; delayed appointments of personnel; voted to cut off expenditures; and breached agreements regarding particular schools (see *Morgan, supra,* 379 F.Supp. at 430-31). Most significantly, they refused to take any affirmative measures not specifically ordered (pp. 17-18, *supra*), thereby eschewing the very conduct essential here and their constitutional obligation as construed by this Court. See *Green* v. *County School*



*Board, supra,* 391 U.S. at 437-38.[16] The district court ultimately determined that new administrative leadership would be needed at South Boston High School and that plans must be filed on a variety of matters. (A. 177-78) These were among the very areas in which the Committee had previously defaulted. See pp. 17-18, *supra.*

More conventional remedies did not "[promise] realistically to work. . . ." *Green, supra,* 391 U.S. at 439. Contempt in the past had produced confrontation, not an adequate plan; injunctions had been disobeyed. Moreover, it would not be possible to frame an injunction of "direct orders," spelling out in advance every necessary step to address the problems at South Boston High School. The district court had entered several specific orders concerning The School, but they had not been followed. (A. 4, 8, 9, 11, 20-22, 100, 180-81) "[T]he necessities of [this] particular case" (*Swann, supra,* 402 U.S. at 15) required the assistance of educators anxious to succeed and free of interference by the School Committee. What the district court termed a "receivership" became the vehicle for securing that assitance. As the court of appeals stated: "The receivership here was a means to enlist without delay top Boston School Department leadership to work in conjunction with the court on the trouble of the School. The court utilized the device to ensure priority attention by senior administrators, under court supervision, to South Boston High's unique problem." (A. 186)

The relief entered by the district court was moderate. The court did not, as requested by respondents [and a year before by Boston's mayor (A. 29) ], close South Boston High. (A. 187) The Civil Rights Commission had

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[16] "School Boards . . . then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."

urged that any receivership encompass the whole system (A. 38); the court's action affected one school. The court did not involve an outsider. Instead, it initially chose as receiver the Community District Superintendent normally having responsibility for the School, and later the Superintendent. This was done "because these interventions would least interfere with the normal operations of the school." (A. 109) To have resorted to contempt proceedings and further detailed orders would have involved the court far *more* deeply in local matters than did use of an expert local official.

"Receivership" may be a misnomer here. A receiver is generally "[a]n indifferent person between the parties to a cause. . . ." *Black's Law Dictionary,* p. 1433 (4th ed., 1951); see also J.N. Pomeroy, 4 *Treatise on Equity Jurisdiction,* §1330 (S. Symons, ed., 1941). Here, because the court hewed closely to the normal chain of command, the receivers were high ranking administrators of the school system. The Superintendent, the receiver since January 6, 1976 (A. 144), is a defendant and is by statute the chief executive officer of the Boston schools. Mass. Acts 1972, ch. 1550, §1. The normal division of functions in the system provides for administrative staff to develop proposals and nominate personnel and the School Committee to exercise final approval. Thus, the actual effect of the relief was to exclude the School Committee from several of its normal functions based upon its record of "resistance, defiance and delay" generally *and* as to the very actions deemed necessary to provide relief as to South Boston High School. The relief was thus analogous to orders requiring one group of officials to implement a remedy while others are bypassed or enjoined from interfering. *Bush* v. *Orleans Parish School Board,* 187 F.Supp. 42, 45 (E.D. La., 1960), *aff'd,* 365 U.S. 569 (1961); 191 F.Supp. 871, 879-80, *aff'd sub nom. Denny* v. *Bush,* 367 U.S. 908 (1961); *Gautreax* v. *Chicago,* 480 F.2d 210 (7th Cir., 1973).



The Petition's specific arguments against the receivership are without merit.

*First,* petitioners assert that the rulings below "disregard . . . the precedents of this Court," apparently those dealing with "local control over public schools. . . ." Petit., pp. 12-14. However, petitioners cite no case even remotely similar to this one. Indeed, the precedents of this Court establish that when school or other officials default, the courts must fashion their own remedial plans. *Swann, supra,* 402 U.S. at 9-10, 16 (implementation of desegregation plan prepared by court expert which revamped student assignment policies in system); *Connor* v. *Coleman,* 44 U.S.L.W 3665-66 (5/19/76) (per curiam) (court reapportionment plan). In *Swann,* default led to displacement of officials in one aspect of the remedial phase, plan development. No principle precludes displacement of defaulting officials in another aspect of the remedial phase, plan implementation.[17]

This Court has upheld relief going as far as or further than what is in question here. *Griffin* v. *County School Board,* 377 U.S. 218, 232-34 (1964) (levy of taxes); *Wright v. Council of City of Emporia,* 407 U.S. 451 (1972) (continuation of joint city-county school system); *Gilmore* v. *City of Montgomery,* 417 U.S. 556, 569, 571 (1974) (review of athletic schedules); *Swann, supra* (redistricting, transportation, grade structure changes); *Bush* v. *Orleans Parish School Board,* 191 F.Supp. 871 (E.D. La.), *aff'd sub. nom. Denny* v. *Bush,* 367 U.S. 908 (1961) (enjoining replacement of school officials by state legislature); same case, 190 F.Supp. 861 (1960), *aff'd,* 365 U.S. 569 (1961) (en-

[17] That the petitioners are elected officials does not insulate them from remedies enforcing the Fourteenth Amendment. See A. 188, citing cases.

joining replacement of school board's lawyer by State Attorney General); *Lee* v. *Macon County Board of Education,* 267 F.Supp. 458 (M.D. Ala.), *aff'd,* 389 U.S. 215 (1967) (requiring state officials to require desegregation of local systems); see *United States* v. *Texas,* 447 F.2d 441 (5th Cir.), stay denied, 404 U.S. 1206 (1971) (requiring state officials to set up sanction system to compel local desegregation).

This case does not involve legitimate claims of local autonomy, but arises from the petitioners' defiance of both state and federal law. For many years, the petitioners prevented implementation of Massachusetts' Racial Imbalance Act (pp. 18-19, *supra*) at the same time as they were violating the Fourteenth Amendment. When desegregation came to South Boston High, it was under twin state and federal court orders, implementing a plan drawn by state authorities [*Morgan* v. *Kerrigan, supra,* 401 F.Supp. at 224; *School Committee of Boston* v. *Board of Education,* 302 N.E. 2d 916 (S.J.C., 1973) ]. Since desegregation, the petitioners' violation of federal court orders and constitutional requirements has been matched by their failure, in violation of state law, to enforce school attendance laws against those protesting desegregation (A. 10-11, 21, 98). The laws of Massachusetts by no means authorize local officials to replace education by racial intimidation, and it is therefore not suprising that the Massachusetts State Board of Education supported the propriety of the district court's orders in the court of appeals.

*Second,* petitioners contend that only one of the court's findings — failure to enforce the truancy laws — involved their conduct, and, therefore, there was an insufficient basis for their exclusion. Petit., pp. 14-16. Petitioners ignore the related district court finding that the promotion of successful school boycotts "created a climate in which more serious violation of law were likely to occur,



and have occurred." (A. 10, 21) More significantly, in framing a remedy, the district court faced the question of the likelihood of Committee cooperation in efforts to address the problem. It could not properly close its eyes to overwhelming evidence from throughout the system that cooperation could not be expected. Finally, the Committee's casting aside of its affirmative obligation is relevant here. The problems at South Boston High School were well publicized. (A. 179) It was the School Committee which had taken actions promoting segregation at the School, which had received orders (never fully implemented) to remove discrimination there, and which now insists on its plenary power over the school system. Petit., p. 4, n.3. Yet, the Committee, true to its pledge, did not act to address the problem. Compare *Keyes* v. *School District No. 1, Denver,* 413 U.S. 189 (1973) (intentional *maintaining* of segregation); see also *Rizzo* v. *Goode,* 44 U.S.L.W. 4095, 4099-4100 (1/20/76).

*Third,* the Committee complains that it was not given an opportunity, after a finding of violation, to proffer remedies. Petit., pp. 16-17. The issue of remedies was fully argued at the November, 1975, hearings (see Tr., 11/28/75, pp. 8-98), but the School Committee chose to take the position that *no* remedy was warranted. After initially seeking a 30-day delay of the hearing, the Committee in closing argument sought to blame the problem at South Boston High School on a black conspiracy. See pp. 53-54, *infra;* A. 28-29, 184, n.6. Although the School had been in turmoil for more than a year (A. 179), the School Committee had not implemented its own remedial measures, or even complied with those ordered by the district court in previous hearings. (A. 4, 8-9, 11, 20-22, 100, 180-81). Given this approach, the Committee's overall default in the remedial stage of the case, and the need to address the problems promptly,

it was not an abuse of discretion for the district court to move forward without waiting for a further response from the Committee.

The other elements of the relief, to which the Petition refers (pp. 9, 18), were also based upon the "necessities of [this] particular case" as shown by the evidence. Orders were not being implemented in the School, necessitating new leadership. (A. 187-88) Black students were being driven from the School, necessitating efforts, of which the repair orders were a part, to secure their return. (A. 137-38)[18]

## Conclusion

In Brown II this Court made a studied decision that the district courts should have a prominent role in the remedial phase of school desegregation cases. The Court reasoned in part: "Full implementation of these constitutional principles may require solution of varied local school problems . . . . Because of their proximity to local conditions and the possible need for further hearings, the courts which

[18] These actions were within the district court's authority. *E.g., Kelley* v. *Altheimer Public School District,* 378 F.2d 483, 498-99, (8th Cir., 1967) (desegregatory transfers of personnel); *United States* v. *Greenwood Municipal Separate School District,* 406 F.2d 1086, 1094 (5th Cir., 1969) (same), *cert. denied,* 395 U.S. 907 (1969); *Lee* v. *Macon County Board of Education,* 267 F.Supp. 458, 484, 488-89 (M.D. Ala.) (equalization of resources), *aff'd,* 389 U.S. 215 (1967); *Plaquemines Parish School Board* v. *United States,* 415 F.2d 817, 831-32 (5th Cir., 1969) ("including repair of broken locks and windows . . . and replacement of fallen blackboards. . . . [And] steps to repair athletic fields, spectator stands and lights which were shown to be in dilapidated condition. . . ."); *Kelley* v. *Altheimer Public School District, supra,* 378 F.2d at 499 (equalization of resources); *Coppedge* v. *Franklin County Board of Education,* 273 F.Supp. 289, 301 (E.D.N.C., 1967) (equalization required although order provided for assignment based on geographic attendance zones), *aff'd,* 394 F.2d 410 (3rd Cir., 1968) (en banc).



originally heard these cases can best perform this judicial appraisal." 349 U.S. at 299. Reliance upon district courts has continued as a theme of this Court's desegregation decisions. *E.g., United States* v. *Montgomery County Board of Education,* 395 U.S. 225 (1969).

The challenged orders, affecting one of 157 schools in Boston, involve the epitome of a district court's grappling with "local school problems," in the best traditions of equity. They have been affirmed by the court of appeals, which has also become familiar with "local conditions" due to the many appeals in this case. The argument that others may receive guidance by this Court's review ignores the unique combination of interference and default by the petitioners which produced the relief. This matter involves exceptional circumstances affecting one school, not a broadly recurring problem.

The Petition should be denied.

Respectfully submitted,

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## Supplemental Appendix

HEARING IN DISTRICT COURT, DECEMBER 13, 1974 (excerpts)

* * *

[75] ALMA CARTER, a witness being called by the plaintiffs [76] being duly sworn, testified as follows:

*Direct Examination by Mr. Van Loon:*

Q. Would you state your name, please, for the record? A. Alma Carter.

Q. And where are you now employed? A. South Boston High School.

Q. And your job there? A. Teacher, biology.

Q. Mrs. Carter, directing your attention back to Friday one week ago today, to December 6th, could you describe for the Court an announcement heard over the loudspeakers around the second period? A. Okay. It was known there was going to be a white assembly in the building, and after students passed for the beginning of the second hour, roll was taken, and there was an announcement made over the PA system, white students report to the auditorium.

Q. And the white students then— A. Then filed from their classes and went to the auditorium.

Q. Approximately how long did that assembly last? A. Second hour and third hour.

Q. And was it limited to white students or were there white adults as well? A. It was known that there were white parents in the assembly.

[77] Q. Do you know whether the white parents were affiliated with any particular group? A. It was— They were members of the Home and School Association, or the Boston— It was never quite clear whether they were the Home and School Association or the Boston Information Center or Boston Information—you know, South Boston.



Q. They could have been adults from the South Boston Information Center?

A Man: Objection.

A. Yes, sir.

The Man: Your Honor, my name is Timothy Gailey. I am filling in for John Mirick.

The Court: What is your last name, please?

Mr. Gailey: Gailey. G-a-i-l-e-y.

The Court: Oh, yes.

Mr. Gailey: At this point I would like to ask what basis there is for concluding where the white parents came from and so forth. At this point it is hearsay.

The Court: Well, that is a point well taken which we may explore. You will have opportunity for cross-examination, of course.

Mr. Gailey: Well, I don't intend to interrupt counsel.

The Court: All right. Sure.

[78] Mr. Van Loon: Your Honor, perhaps it would be easier—

The Court: Do you have any other questions? Does that conclude Mrs. Carter's testimony?

Mr. Van Loon: Oh, no, your Honor. We have substantially more questions. I think—

The Court: Well, ask them. What are you waiting for?

Mr. Van Loon: I would like to offer into evidence this as Exhibit 1 for the plaintiffs, a communications log produced by the School Department for that day, which shows that it was—which identifies the group of white parents in the rally, just to clarify the record.

The Court: That will be received. It will be marked Exhibit 2, and I will tell you why. We will mark as Exhibit No. 1 the copy of the videotape which was asked for by Mr. Leubsdorf at the conclusion of the morning session. The gentlemen from the Police Department told me that he could make or have made a copy of that tape

rather readily, and that then will be Number 1, and this Number 2.

Can't you get Mr. Pressman to do the handing out while you ask the questions? I want to move along.

Q. (By Mr. Van Loon) Approximately how long did this assembly last? [79] A. Approximately two hours.

Q. And were you—is your classroom in the vicinity of the auditorium where the assembly was held? A. No. My class is on the third floor, on the north wing of the building.

Q. Were you able to tell in any way that the assembly was going on? A. Yes. We could hear the cheers. The sound, I guess, came up the stairway, and the students could hear noises, you know, cheers and things in the assembly, people clapping and that kind of noise.

Q. Could you hear any distinct words or phrases? A. No, we heard no distinct phrases while the assembly was going on.

Q. About what time did the assembly end? A. The assembly ended at the end of third hour. Well, the assembly ended when the bell rang for fourth hour.

Q. And what happened at that time? A. At that time, my class is in the basement of the building. I have a study, and I was proceeding to my office duty on the second floor, and black students were coming from the basement, because there were only black students in the—all the white students are in the assembly. They are coming out of the assembly, all the black students are filing out to go to their next class. As I was [80] coming up from the basement and on the landing above the second—at the second level, black students were held back and white students were allowed to pass. In other words, they separated the two groups. And in the—you could hear people, you know, you could hear milling, people chanting through the building, and you knew that there was something brewing in the building.



Q. You say chanting. Could you hear distinct words? A. Yes.

Q. What were the students chanting? A. "Niggers eat shit."

Q. Were there this— A. Continually.

Q. Was this a sporadic one or two? A. No. It was like a, you know, like a chant goes on for three, four, five or six, you know, as long as they were marching in a group, they chanted, you know, they were chanting it.

Q. Did you have some equipment — any audio-visual equipment —

The Court: Excuse me. Is that the same words repeated?

The Witness: "Niggers eat shit. Niggers eat shit. Niggers eat shit."

The Court: I mean that was what they were saying.

The Witness: Yes.

[81] Q. Were there any other phrases chanted by these groups? A. At this particular time I didn't hear any other phrases.

Q. Could you estimate the number of students, and I presume— Am I correct that all these students were white? A. Yes.

Q. And could you estimate the number of students that were engaged in this activity? A. I could not see the students. I only heard the chants at that time.

Q. Approximately how far away were you? A. Oh, I assume that they were coming from the other side of the auditorium. I couldn't—you know, you could just hear a chant. I had absolutely no idea at that time how many students there were making the noise, but it was loud enough for me to hear from the other side of the building.

• • •

[85] Q. At another time did you find yourself caught in the audio-visual room with white students outside? A. Twice

I have used the audio-visual room for safety. On this particular morning, Monday, I was showing a film to my second hour class, and I took the film down at the end of second hour to take it to the audio-visual room to leave it so that I would have it again for fourth hour. I had to go back and pick it up, and as I proceeded down the hall, I heard coming up the stairwell the chant again, "niggers go home," a different chant, "niggers go home," then it changed to "niggers eat shit." I had absolutely no idea how many students it was at this time, because it was again coming up the stairwell, and I am at the top of the stairwell.

Q. This is the school day following the day of the white [86] assembly that you have described? A. Yes. This is Monday.

Q. Monday, the ninth of December. A. The ninth.

Q. Of this week. A. Yes. I immediately went down the hall, because I knew there would be policemen or aides or something in the hallway, and I knew they were coming up the staircase. When I got to the hallway, there was no one, no police, no aide. I continued to hurry down the hall, knowing that I could find safety perhaps in the audio-visual room, but they were moving a bit faster than me. I did manage to get into the audio-visual room, which is about —at the base of the steps there is about this amount of space. (Indicating) I pulled the audio-visual—

Q. Excuse me. This amount. About the size of a closet? A. About this. (Indicating) About the size of a closet. And I went in and pulled the audio-visual—the projector and the stand I was using in front of me, assuming that I could use this for protection if need be. The students passed by the door, as I was, you know, getting the stuff in, and—

Q. Did they see you there? A. They saw me there. They began to call me "black bitch." They had, you know, different—you know, "nigger," [87], "there's a nigger."



There was a white male teacher up about six stairs as these go here. He came to my assistance and stood beside me there. I was very— It was a very tight space, so I could hardly even move up the stairs, but he did come and stand with me.

Q. In this group that passed, were there students or adults as well? A. They were students, students that I recognized, students that I have in class, some of them.

Q. As far as you know, were any disciplinary actions taken against any of these white students? A. As far as I know, there was none taken.

Q. You say you recognized some of the students? A. Well, they were students in my classrooms.

Q. Do you know their names? A. Yes, but— Yes, you know, I do, but there were thirty-five or forty students, and they were just running through the—you know, they were roaming in this particular area, and there— I did recognize two students that I did have in class. Yes.

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[90] Q. (By Mr. Van Loon) On Monday morning of this week, Mrs. Carter, were you in the office at any time of the day? A. Yes. As I have stated, I do have office duty at fourth [91] hour, and I am in the office at that time.

Q. And were there white adults in the vicinity at that time? A. There were. Yes. The office was crowded. The seats were completely taken. There were white females sitting in the office.

Q. Were you surprised for any reason to find these white adults in the building on Monday morning? A. As a black instructor, we generally are not—we don't have the facilities or whatever to stay for staff meetings. The van comes, and we have to leave when the van comes. And on Friday there was a staff meeting after the assembly—

Q. This is a faculty meeting? A. This is a faculty meeting, yes.

Q. On Friday afternoon? A. On Friday afternoon, which we did not attend, and we were told on Monday morning—we generally find out what has happened in the staff meetings, the faculty meetings, and it was told that Dr. Reid had stated there would be no more meetings, no more rallies of that type, and no more groups of parents coming into the building at that time. On Monday, the mothers were, you know,—they were there on Monday morning.

Q. Did they move at some time from the office to some place else in the building? A. At that time they left the office, because the office [92] was so crowded we could not even carry on the regular, you know, goings—administrative things that had to be done in the office. They were moved to the auditorium. I'm sorry, that was Friday. On Monday they were moved to the library for a meeting.

Q. And were they there for a long period of time? A. They were there until the end of the day.

Q. And did their presence have any discernible effect, as far as you could see, on the conduct of students within the building? A. Yes. Certainly.

Q. What was that? A. When the bells rang for passing of classes, students would congregate in large groups, thirty-five to forty at times, not passing. They refused to move. They would be chanting things. If black students tried— Policemen have blocked the ways, certain areas, so that black students couldn't pass through them because the groups in effect were hostile groups. They were shouting things, the "niggers eat shit" chant that they carry on. The building was visibly tense. Everybody was very tense.

Q. Did the white parents remain for the full school day? A. For the— When we left, when the black students left on the bus and we left on the van, the white parents were still in the building.

[93] Q. Were they still in the library at that time?



A. They were still in the library at that time, and the faculty meeting was scheduled to be held in the library.

Q. And was the faculty meeting then held in the library? A. On Monday— The next day, I was told that because the mothers refused to move from the library, the faculty meeting was held in the auditorium, and at that time the mothers, or women, that were in the library decided that they wished to speak to the faculty members, and at this time—this was all white faculty, because all the black faculty had to leave—they came into the auditorium, into the faculty meeting, and the white teachers of South Boston High School walked out of the meeting.

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[106] *Cross-Examination by Mr. Gleason:*

XQ. Mrs. Carter, were there assemblies from time to time of black students? A. There has been one black assembly, yes.

XQ. And would there be congregations of black students in the corridors? A. Going to the assembly? Yes.

XQ. No, not just on that occasion, but on other occasions. A. Any time—

XQ. You spoke of congregations and groups of white students— A. Yes.

XQ. —gathering in the corridors. A. Yes.

XQ. Would that happen with black students? A. This would happen any time there was a type of—you know, when there were segregated meetings called over the PA system, students that were left in the room became upset.

XQ. Became what? A. Upset. You know, tense. Why these types of meetings were [107] allowed to go on.

XQ. Would groups of white students be left—would there be— You said there was one black assembly? A. There was one black assembly, yes. In their rooms.

XQ. In three and a half months, or three months. A. Yes.

XQ. In home rooms? A. No, not in home rooms. The students file to their second hour class, and generally after the roll was taken, they then filed to the auditorium for the meeting.

XQ. And would that be— There would be white meetings and black meetings? Separate? A. To my— There were two white meetings, two all-white meetings, one black, all white—one black meeting.

XQ. Are there assemblies of both blacks and whites? A. There has been one black—you know, integrated assembly, and that was a sophomore assembly, for all sophomores. There have been several all-senior assemblies, and all the seniors are white, so that would be an all-white assembly.

XQ. But I had the impression that frequently there would be congregations of white students in corridors and blocking the way and so forth. Has that been true— Am I correct that that is a frequent occurrence? A. In the last two weeks that is a frequent occurrence.

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[112] AFTER RECESS

(Witness sworn.)

ARTHUR ALEXANDER, a witness called by the plaintiffs, being first duly sworn, testified as follows:

*Direct Examination by Mr. Van Loon:*

Q. Would you tell us your name, please, sir? A. My name is Arthur Alexander.

Q. And where are you employed? A. I am employed at South Boston High School.

Q. In what capacity? A. In the language department. Spansh.



Q. As a teacher? A. As a teacher, yes.

Q. And for how many years— Is this your first year teaching? A. No, this is my fifth year.

Q. Directing your attention—thinking back to Monday morning of this week, could you tell us where you were in the opening hour of school? A. Yes. I was—it was the second period, which is planning period, and I was going on my way down from where I taught to study hall, and some mothers were coming in, and—

Q. Excuse me. You were coming to the— A. Yes. I was going down to study hall, and there were some [113] mothers coming in, and some of them and the girls had some shouting. I heard slurs on both sides. The mothers were saying something to these girls. They were— There were some racial slurs on both sides.

Q. What was the race of the mothers that were coming in? A. Well, I heard one woman said, "nigger," and I heard the girls saying that "you white trash you," and I tried to sort of quiet, you know—to get the girls to, you know, to go on back down to study hall at the time, because at that time I have duty down there at the time.

Q. And this was in the vicinity of the front door, of the entrance to the school? A. Yes, the front door, entrance to the school.

Q. And these were white parents? A. These were white parents, yes.

Q. And were you with the students—you then went to the study hall, where your next assignment was? A. Yes, I went to study hall, because I have always tried to break up things if I hear it, and I tried to get the girls down to the study hall at the time.

Q. And was there an effect on the students in the study hall from this action? A. Yes, there was quite an effect, because they said, well, if these people are women, you know, they are grown women and they are doing this, what

can they expect of [114] their children? I mean, their children must do the same thing to us too because they are doing this to us.

Q. In other circumstances and not limited at all to Monday of this week, in your normal teaching duties, is your teaching ever interrupted from sounds outside? A. Yes. During the week of Thanksgiving, the white students had several assemblies, and they walked out at will, and in their walking out, the corridors were rampaged. I remember one day just a little before Thanksgiving, there was such—there was a group of students walking down, and I was so afraid I told my black students, I said. "Sit here and don't get excited. Keep quiet." and my door was open and cans were thrown in and racial slurs—

Q. What specifically did you hear? A. —were yelled. "Nigger go home. Go back to Africa. I am going to get you. You are one of those I am going to get. You are not going to be here by Christmas." I mean "after Christmas. I am going to get you."

• • •

HEARING IN DISTRICT COURT, DECEMBER 27, 1974 (excerpts)

• • •

[125] JOHN J. McDONOUGH, being first duly sworn, testified as follows:

*Examination by the Court:*

Q. Would you please state your name and address, Mr. McDonough? A. John J. McDonough, 250 Gallivan Boulevard, Dorchester, Massachusetts.

Q. And when were you first selected as a member of the School Committee? A. Your Honor, I was elected in 1965, and I served my first term in 1966-67.



Q. Thank you. Now, have you—

The Court: I want Mr. McDonough also to have a copy of the questions.

The Witness: I do have them.

Q. Oh. All right. Now this first question had to do with what affirmative steps, if any, you will take to promote the peaceful implementation of the state court plan currently in effect, and you said that "I will continue to obey lawful orders of the Court, but I will take no initiative or affirmative action to advocate or supplement this plan, which in conscience and principle I oppose, based on my belief that the plan increases racial antagonism and endangers the safety of school children."

When you say that you don't take any affirmative action, does it follow that you will take no action at all, or won't you do something to endeavor to reduce [126] racial tensions? A. Let me answer one question at a time, your Honor.

Q. Fine. A. To begin with, I have always complied with the orders of this Court. I intend to do so in the future, but if you ask me to go one step beyond where you direct me, I will not take that step.

Q. Well, let's take a situation such as a desegregation plan. They don't all have to be three inches thick, but they come pretty thick, I gather, and the Court, by approving a plan and directing it to be carried out, intends that things necessary to carry it out be done. Does your answer mean that you would do such things? A. Yes, your Honor. For the record, I have complied with the Court's orders; any request that the Superintendent of Schools asked of the committee I voted for; and, as the chairman pointed out, questions of teacher aides, bus monitors, anything that he asked for he got as an affirmative vote from me, because I believe that even though I didn't agree with the plan, I wanted to make sure that it was implemented with due

safety, with thoughts of due safety for all the children of the city of Boston, and on that basis I did vote for it even though I did not agree with it.

Q. Is there anything which you have done to help bring about the safety of the children? Can you think of anything that you have done along those lines? A. Your Honor, I have not interfered in any activity of the Superintendent or any order of this Court, with the view that the safety of the children would be paramount, and I will continue to follow that direction.

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HEARING IN DISTRICT COURT, April 23, 1975 (excerpts)

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[12] The Court: All right. The motion of the School Committee is denied, and the order that there be two full-time recruiters for black teachers which was entered back on January 28, 1975 is reaffirmed, basically because the order of January contemplates a long-range effort and the establishment of an office which will be able to increase the number of applicants. We know from what Mr. Kennedy has said and what Mr. Connolly has said that there is just no way of predicting with certainty how many black teachers will be needed, and if the one-for-one hiring ratio is going to be more successful in September of 1975 than it was in September of 1974, I believe that the programs and procedures set up by the Court's order on January 28th have to be carried out.

Last fall, you will recall that there were very diligent efforts made for a one-to-one hiring ratio of black and white teachers that were new to the system in September of 1974, but the actual percentage fell far short of 50 percent black teachers, because there just were not enough qualified black teachers available, and to guard against that



danger and real possibility, it is necessary to set up an office that will convey the message to the students in black —to black students in teachers' colleges and elsewhere that they really have [13] a genuine employment opportunity in the schools of the city of Boston, provided they are qualified to teach here and meet the various qualifications.

So those are the reasons for the Court's denial of that order, and the Court further orders by way of a follow up that as soon as convenient, perhaps within a week, I would expect that the School Committee—in fact, I won't say I expect it; I order that the School Committee send a simple letter to the clerk identifying who these persons are. We should have the names of the two recruiters and the fact that they have indeed been employed.

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HEARING IN DISTRICT COURT, June 2, 1975 (excerpts)

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[68] The Court: What I am getting at, and in your absence, actually, so you will know exactly, I mentioned that the last item on the agenda this morning would be this requirement under the timetable for implementation. I am looking at page 102, at the bottom of the page there, and quoting: "The School Department shall develop and file on or before May 23, 1975 a detailed plan of activities, responsibilities, and internal scheduling for the implementation of the plan ordered by the Court in the available time period, similar to that filed as Section VII of the plan filed by the School Committee on January 27, 1975."

Now do you know the status of that requirement?

Mr. Connolly: I would have to check on that, your Honor.

The Court: Well, with whom?

Mr. Connolly: Mr. Tierney. I had assumed that he was handling that aspect of it.

[69] The Court: Well, here is what please do between now and the next session. Ask him about it and to look into it. Are you familiar offhand with the type of scheduling that I made reference to as having been in Section VII?

Mr. Connolly: I am rereading it, yes, your Honor.

The Court: Yes. Well, the identical provisions were in the December 16th plan, and they were carried over to the January 27th plan, and they constitute a number—well, it is not that many pages really, twenty pages approximately. It talks about the implementation process and schedule. The reason I bring it up at this time is because that is quite close, I think, to the matter of a schedule of desegregation expenditures. I think they are similar, unless there is a schedule in here that deals with expenditures exactly, which there may be. I think it is in here.

Well, you know, these subheadings, materials and supplies and transportation and external— Here it is. Financial Considerations. It follows Internal School Safety and Security. This is sub L, as in Longfellow. It is the last of the particular tables. It says there, 1, Activities, sub a, Assessment of Montetary Needs. This was to be for the period July 1, 1975 to June 30, 1976. Then it has:

"Based upon prior year desegregation expenditure [70] pattern and Phase 2 plan."

Next: "Determined by personnel involved in the current desegregation budget and expenditure control."

"Determined by school officials in charge of the various desegregation activities described in Parts C through L."

Then sub b, Determination of Revenue for Desegregation Activities.

Just a second. Would you hand this to Mr. Connolly, because this is, to me, very important. This is another copy. That is in the January 27th plan.



It says here, Determination of Revenue for Desegregation Activities. First is General School Purpose Budget. Next, Supplementary Appropriations from the Mayor and City Council. Next, Commonwealth of Massachusetts. Next, Federal Government. Next, Foundations.

The next thing is Responsibility. The next subheading is Cooperation. I don't want to read the whole thing.

Next is Timetables, and it finally winds up: "It should be noted that the above financial considerations relate only to a segment of the entire desegregation cost and process. There are other costs beyond the control of the Boston School Committee: construction of new schools, acquisition of facilities for school conversion, crossing guards, police and other public safety service."

[71] The reason I bring this up at this juncture is that my understanding of the School Committee proposal itself is not substantially different from the Mayor's motion. I don't know whether you are prepared at this time to respond to that or not, but have in mind either for now or next hearing, number one, the May 23rd filing, and where it is I don't know, and two, this type of information, which comes right out of the School Committee plan.

Now Mr. Tierney is back. Do you know about the May 23rd filing and where it is and what its status is?

Mr. Tierney: Unfortunately I do not, your Honor.

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HEARING IN DISTRICT COURT, June 18, 1975 (excerpts)

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[7] [The Court] Now one other matter before I turn to this matter of student assignments. The plan calls for the School Committee to appoint area superintendents forthwith, and we know from reading the papers that there has been considerable action taken in that direction, but we

still don't have area superintendents for the nine school districts, that is, the eight community districts and the one citywide district.

So long as the question of a stay of the Court's order of May 10 was unresolved, I didn't want to bring up this point, but it has now become essential, because the Court of Appeals has ruled that this plan will go into effect in September, so I will now specify forthwith. Instead of just leaving it an unspecific date, I now set the date as being a week from today, and, more specifically, the School Committee is ordered to designate or appoint these area superintendents by a week from today, and we will have another hearing on this case generally a week from today, at ten o'clock on the 25th.

I know from the media, of course, that there has been some problem as to the duration of these appointments. There is nothing in the order talking about the fact that they should be appointed to—at least for a period that would carry the particular areas through the opening of schools, and certainly until the end of this year. We all know the problem. At least, we all know what it says in the media. [8] That is, there is, understandably, a desire on the part of the School Committee to appoint people who are acceptable to and who will be working closely with the Superintendent-Designate, Miss Fahey. On the other hand, she does not assume office until midway through the summer, so there is a problem there.

Surely the School Committee will make an effort, I assume, to appoint area superintendents whose tenure will carry beyond Miss Fahey's assumption of office. It is certainly not going to do much good to have a person in a position of that importance for just a matter of weeks and then have a new person come in to become oriented in the responsibilities of the new position and have that orientation period practically come up to the time when school starts. So it is a practical problem.



I certainly hope that the committee appoints people who will carry on with some continuity, but there is nothing in the order on that and I am not making any order. It just seems to be common sense that whoever is appointed should be in office at least through the beginning phases of the desegregation next fall, but that is just hortatory. The only order portion of it is that we have got to have names, and the order is that the defendants appoint nine people on or before Wednesday of next week. We have got to get moving on this matter. I assume you realize that. There are six [9] area superintendents currently, and presumably they will be simply assigned to serve in one of the nine districts, so it will be three new appointments. So that is specific.

I will turn now— Yes, Mr. Connolly.

Mr. Connolly: May I have an objection to that, your Honor?

The Court: Could you state what the objection is?

Mr. Connolly: The objection is based on the appeal, your Honor. It is part of your order. We intend to raise that before the Court of Appeals, the order requiring us to appoint area superintendents.

The Court: Of course.

Mr. Connolly: I don't want to waive it by not objecting at this point.

The Court: Well, fine. Don't sit down for a minute, because I just have to be certain. That is what the stay is all about. Of course you have a right to appeal everything but the orders that were promulgated on May 10 have to be carried out.

Mr. Connolly: I understand that, your Honor, but I don't want to waive this before the Court of Appeals when it comes up for argument in September.

The Court: Oh, don't worry about that. You are never

waiving a thing. You would not be waiving anything. It is just that that is what the denial of the stay meant. It means [10] that you have got to go forward. All these things can be appealed, of course, and I would not think that you are waiving, but I just want to be sure that you understand that despite the pendency of the appeal, it has to be done.

Mr. Connolly: I understand that.

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HEARING IN DISTRICT COURT, July 31, 1975 (excerpts)

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[10] [The Court] Later this morning we will talk about what's to be done with respect to the forms of appeals or review unit. According to the newspapers, I don't think I have [11] gotten anything official in a way of filing, but according to the newspapers, the School Committee said: Well, we won't do anything about it unless the Court orders directly.

And that's of course the way, that's, if you call it the phase that we are in now, what should be called Phase 1⅞, whereas the school will do only what they are ordered directly to do by direct order.

If you say "spend $1.43 on something, we will spend $1.43; otherwise, we have some doubt about it."

Well, number one, this order is considerably more general than to tell the members of the School Committee to obey the direct orders of the Court. Since the last hearing, Mr. Tierney was kind enough to send along to me a copy of an order which was voted by the School Committee dated July 25, 1975. This is their order, and this, by the way, is being used by the city to hold up every expenditure in this case.

There are ample ways to defeat segregation. I should think an excellent way would be to say: We are not going



to spend any money, or we are going to provoke or develop a situation where everybody has got 100 percent good intentions, but there is just no money with which to carry them out.

The court appointed experts weren't paid when [12] they came down to the city hall. Routine, no money, no one going to pay any money any more. This is not going to happen.

We have not come this far in this case to be thwarted by a resurrection of some of the bad faith that characterized the operation of the schools a number of years previous to June '74.

Here is the order:

"That there be no further expenditure of School Department funds for Phase 2 desegregation costs beyond what Mayor White had approved in his July 14, 1975, submission to the Boston City Council."

And a further paragraph ordering: "That any further expenditures by the School Department for purposes of school desegregation not be made unless and until they are approved by specific order of Judge Garrity's court by a budgetary classification designation." End of vote.

Well, that causes me to take a look at one of the provisions in this court order dated May 19, and there are other similar orders elsewhere. It says, and I quote from Page 100: "That the Defendants, their officers, agents, servants, employees and attorneys shall take all actions necessary to accomplish the steps set out below on or before the dates listed."

A little affirmative action is necessary here [13] by the School Committee. I am reminded of the story about the military people or the practice sometimes in the military, that two people debating whether something should be done, and the answer is: "Is that a direct order?"

And then the superior officer says "That's a direct order."

Then the junior officer says: "Well, all right, I will do it."

This case is not going to work that way, and it is not going to have to work that way. The Supreme Court is too clear on the obligations of the School Committee.

Here we go back to June 21, 1974, which is the order as of that date, and it just tracks the language of the Supreme Court:

"The Defendants are ordered to begin forthwith the formulation and implementation of plans which shall eliminate and reform segregation in the public schools of Boston."

And there are so many cases cited, and they are known to the Defendants just as well as they are to the Plaintiffs. So there has got to be, and I know that in many areas there has been a disposition to go through with this. By that I mean a disposition to carry out the orders that are going to result in desegregation of [14] the schools.

And I just can't let the School Committee tell me they are not going to spend any money until I find out what budgetary classification the particular expenditure belongs into or unless the expenditure of each dollar is ordered in response to the question "Is that a direct order?"

Well, the direct order has been already given. It was given over a year ago. The School Committee has to take all necessary steps, and that includes the expenditure of money, and that includes the payment of the court appointed experts.

They were paid right up along regularly until we reached Stage 1⅞. I think we will be in court every day for the next 20 days if need be. I will tell you I am going to be here, and we are going to go through with this. So playing games at this stage isn't going to change the effect of the order.



Mr. Tierney: Your Honor, the School Committee's vote, as I understand it, is predicated or necessitated by the Mayor's budget cuts. Laying the full blame on the School Committee for the lack of money is, I believe, unwise and unwarranted.

I have attempted to decipher the memorandum of Mr. Maloney from Mr. Wall, and I am going to take it up [15] with my clients as soon as I have an opportunity this week. But again, your Honor, I would urge you to consider the fact that the employment of people during the summer planning, all of these efforts that are necessary for the opening of schools requires the people be paid. And it is my understanding that this money is not being made available to the committee in their budget by the Mayor. Now, I am sure Mr. Maloney will have a comment on my comment; but, again, your Honor, I don't believe full blame can be laid at the doorstep of the committee.

The Court: Has the committee the funds? It has $126,000,000 has it not?

You are not going to spend that? You are because you are going to do it under court order. I said last year: We will spend the money needed for desegregation of the schools opening in the fall. And, of course, the thinking is: We will have no money to keep the schools open next spring.

I said a year ago, I would face that problem when it arose and I say it again.

You are ordered, and your clients are ordered to spend the necessary funds for planning purposes and for carrying out this Court's plan. Now that is a direct order, if that helps.

The theory behind it, I hope everybody understands, [16] and that is that an ounce of prevention is worth a pound of cure. Are we going to spend $1,000 for planning in the summer and save $10,000 for broken windows and buses and police overtime in October? That's what we are

discussing here. Whether there are going to be planning expenditures which are very, very minor in comparison to the—I don't know the adjective I wish—but you know the type of expense that we all hope to avert in the fall. Each dollar spent today is worth many times a dollar spent in October or November trying to cope with emergencies that may then arise. So spend it now. You have got it. And you have got to do it this fall just as you did it last fall.

Now any submissions, and so forth, you want to file, I will in the future, as I always have in the past, consider. But we cannot have frustration of the court's order by an intrahouse—meaning intramunicipal government—dispute. That's all I will say at this time. We get back to this point. I don't want to hear from you, Mr. Gleason, at this point.

I was trying to get non-controversial things at this point. This is a whole big topic.

I said, however, before—and we spent a good time on this Monday afternoon, I think it was, on this point. That doesn't mean that the School Committee has been [17] ordered by the Court to spend every dollar it can lay its hands on and label it desegregation. I have not in the past ordered the expenditure of any funds that were not reasonably required. In fact, I have used that expression "reasonably necesary," and that's still the standard. But I haven't had any evidence so far the School Committee is squandering money—certainly not on any planning in connection with Phase 2. And that's what I'm concerned with currently.

When are these teachers' raises going to be employed and paid; and whether the planners are going to have to go home because there is no money for planning? Well, I get back to this. That's a whole major subdivision, and I will hear all of you—Mr. Tierney, Mr. Gleason or anyone else that wants to say anything on any aspect of it. But that's really a bigger topic.



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(3) Hearing in District Court, November 22, 1975 (excerpts)

[8] Yvonne Slaughter, Sworn

(The following affidavit of Yvonne Slaughter was read by the witness:

I am a Senior (12th grade) student at South Boston High School. Last year I attended the Jeremiah Burke High School. I am black.

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*Cross-Examination by Mr. Haroz*

[50] XQ. Referring for a minute to Paragraph 2 in your affidavit, you stated that the sheets of paper that you referred to often got into the school. Can you tell us what you have seen on those sheets of paper? A. Like, "We are going to get rid of the niggers." It is stuff like that. It is a whole lot of things. I don't remember all of those things that were there.

XQ. And you have seen these actually in the classrooms? A. Yes, because, like, when the bell rings, they forget them on the desks and I know what they are, right, and so I just go over and look at them.

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Hearing in District Court, November 28, 1975 (excerpts)

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[42] Mr. Tierney. What is the administration's view of this testimony, your Honor, and of these allegations? Dr. Reid testified in his opening statement, he noted the

pluses. There were no crowds outside the buildings. He felt the faculty were more than able this year to communicate with the students; that the cafeteria had been neutralized; the faculty was better organized; that there were no students chanting and roaming, as there were last year, throughout the building; that they have in fact elected multi-ethnic student councils; and there in fact has been an improvement, in that the white students, at least this year, have elected a caucus.

He feels he has better records this year, and therefore that he is better able to implement due process. He feels [43] the aides are more helpful, and he feels that the Court's order has helped him in controlling the presence of any outside elements. Nonetheless, he was candid about the fact that the faculty morale has deteriorated, that the faculty feels under storm, as he put it, by numerous outside forces.

However, he felt that the University of Massachusetts programs were helping. He cited the Federal Reserve Bank's efforts in South Boston. In fact, I think the evidence is quite abundant that the School Department as a whole and Dr. Reid in particular made a profound effort over the summer to open South Boston High School with a minimal amount of tension and violence. I can cite his bulletins, Superintendent's circulars, his daily conferences with Mr. McDonough.

I think it is fairly well known that Dr. Reid is a very candid and honest man. He might not put everything in writing, but that does not mean he is not concerned.

The Court inquired as to what efforts have been made to insulate the school from disruptive outside agitation. Well, agitation does not have to come only from the South Boston community. Again, what has the evidence shown? Dr. Reid has candidly stated that there are incidents, that there are



racial tensions in the school, and that if he speaks to a student right afterwards, he has confidence in that student's version, but as peers, parents, and community groups become involved, the sharp edge of truth is lost for what the student [44] initially had to say.

Now what was the testimony of Mr. Cunningham? My memory is that the last six weeks have been disruptive, and that since October 6th, there has been heavy black community involvement, just as there was white community involvement before the Faith incident, and what was Mr. Cunningham's conclusion? That the community should stay out of the school.

The evidence has to be viewed realistically, your Honor, and what do we see before us? We see a well-planned but ill-conceived and founded effort to close a high school in a community that has come to symbolize resistance to the Court's order.

The Court: When you speak about effort, to whom do you attribute the effort? Are you talking about the blacks or the whites or both?

Mr. Tierney: I attribute the effort, your Honor, and I think the evidence will bear this out, to a core group of students, black students within the high school, that have participated in a well-coordinated effort by certain leaders of the black community, assisted by the attorneys for the plaintiffs, in an attempt to close down South Boston High School. I believe the evidence is clear with respect to the preparation of the affidavits.

The Court: Do you think that the effort to close the school is on account of what happened, or do you think the [45] effort to close the school is independent of what happened?

Mr. Tierney: I don't understand your Honor's question.

The Court: Well, the plaintiffs' spokesman is Mr. Van Loon. He said the school should be closed because of what happened to the blacks. I take it your view is that what plaintiffs allege happened did not occur, and that the effort to close the school is something that was preconceived independently of these racial incidents.

Mr. Tierney: Yes, sir. I thing that would be a fair characterization. I don't think— I am certain there are racial incidents. Certainly there is racial tension. We would have to be extremely naive to deny that. But the plaintiffs' version of those racial incidents is open to doubt, I submit.

I mentioned to your Honor during the course of cross-examination that credibility is a very fundamental issue here. There are always two sides to a story. My reference to Dr. Reid's statement about a student's version was meant to illustrate the fact that perhaps the picture as painted in the affidavits is not quite as glum as the picture initially presented to Dr. Reid in his office. It is only once the students are out into their community, and they are upset, of course they are upset, black and white students, both of them, but when the black students have come to their community, I submit their concerns have been magnified and [46] blown out of proportion.

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DECISION AND ORDER FOR A DECREE, JUSTICE QUIRICO,

S.J.C., MARCH 22, 1975

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPREME JUDICIAL COURT

No. 73-190 Equity

BOARD OF EDUCATION OF THE COMMONWEALTH OF MASSACHUSETTS

*v.*

SCHOOL COMMITTEE OF THE CITY OF BOSTON

*Decision and Order For a Decree*

This court has before it once again the continuing dispute between the Board of Education of the Commonwealth of Massachusetts (the Board) and the School Committee of the City of Boston (the Committee) over the requirements of the "racial imbalance law" (G.L. c. 71, §§ 37 C and 37 D, inserted by St. 1965, c. 641) in relation to the public schools of the City of Boston. In this "Petition for Further Relief by Enforcement of Administrative Orders" the Board seeks a decree ordering the Committee to comply with "all aspects of . . . [its orders] dated June 25, 1973, December 26, 1973, January 28, 1974 and March 4, 1974 with which . . . [the Committee has] not yet complied."

The last three orders cited in the Board's petition, as well as the Board's order of March 19, 1974 which is considered below, was adopted by the Board to aid the implementation of the "Short Term Racial Balance Plan" for the Boston public schools (the Plan); the Plan was adopted by the Board by its order of June 25, 1973 and is intended to be in effect by September 1974. In *School Committee of Boston* v. *Board of Education,* Mass.,[a] decided by this court on October 29, 1973, we held the Plan to be a valid exercise

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[a] Mass. Adv. Sh. (1973) 1315, 1326-1327.

of the Board's statutory authority under G.L. c. 15, §§ 1I - 1K, inserted by St. 1965, c. 641. We now hold that the implementing orders which are the subject of this proceeding also constitute a proper exercise of such authority and are themselves valid. The Board has previously sought decrees from this Court for the enforcement of some of these orders. Its last previous petition was filed on January 4, 1974 and heard by a single justice of this Court on January 9 and 16, 1974. On the latter date the court entered an Order in which it (1) found that the Committee had not complied with certain portions of the Board's order of December 26, 1973 and (2) ordered the Committtee to comply on or before January 21, 1974 "in all respects with that portion of the Board's Order of December 26, 1973 . . . with respect to what the Order required . . . [the Committee] to do and accomplish on or before January 15, 1974." We summarize relevant developments occurring subsequent to the entry of this Order afer first reviewing the contents of the Board's order of December 26.

Such order contained a detailed "implementation timetable" which required the Committee to submit to the Board certain described reports and information and to accomplish certain other steps on or before a series of dates specifically set forth therein. The first of these dates was January 15, 1974, and, as noted, was the subject of the Court's order of January 16, 1974. The subsequent dates in the timetable were February 15, April 1, April 15, and May 15, 1974. A later order of the Board dated March 4, 1974, modified the dates for certain of the submissions required to be made by the Committee from April 1 and April 15, 1974, to May 1 and May 15, 1974 respectively. That portion of the December 26 order setting forth the implementation timetable is incorporated herein and a copy thereof is attached as "Appendix A;" that portion of the March 4 order permitting certain modifications to the



timetable is incorporated herein and a copy thereof is attached as "Appendix B."

On January 21, 1974, the Committee submitted to the Board a document entitled "Response to the December 26, 1973, Order of the Massachusetts Board of Education;" on January 28, 1974, the Board issued an order which found in part that the modifications to the Plan proposed by the Committee in its January 21 submission lacked sufficient detail, and ordered the Committee to submit further details of such proposed modifications by February 15, 1974. On February 15 the Committee submitted to the Board a document entitled, "February 15, 1974 Response of the Boston School Committee to Board of Education Order of December 26, 1973;" on March 4, 1974, the Board entered another order which found in part that the Committee, by its February 15 submission, had still not complied with those aspects of the Board's previous orders relating to certain proposed modifications of the Plan, and ordered the Committee to submit "the required, detailed proposed modification[s]" by March 11, 1974. On March 11, the Committee submitted to the Board a document entitled "Response of the Boston School Committee to the Board of Education Order of March 4, 1974;" on March 19, 1974, the Board issued an order which again found that the Committee had not complied with certain aspects of the Board's previous orders, and ordered the Committee to submit certain information by March 25, 1974.

On March 6, 1974, prior to the last two interchanges between the Committee and the Board described above, the Board filed the present petition with this Court. In it the Board reviewed the proceedings through the issuance of its March 4 order, and alleged on information and belief that the Committee would not fully comply "with the remaining dates in the implementation timetable" and would "attempt to prevent implementation of the racial balance

plan in Boston by September of 1974'' unless ordered by this court to do so. It then prayed for a decree for the enforcement of its orders, as described above.

A hearing on this petition was held before a single justice of this court on March 20, 1974. At the hearing counsel for the Board moved to amend its petition by adding thereto certain paragraphs which described the March 11 submission of the Committee to the Board and the March 19 Board order. The motion was allowed without objection by counsel for the Committee. The Board's counsel also entered in open court an oral waiver of paragraphs 23 thru 25 and prayer 9 in the petition relating to weekly meetings between the staffs of the two parties.

As stated to counsel for both parties at the hearing, it is the court'ss opinion that the Board's present petition raises only two issues for our consideration: (1) whether the Committee has complied with the Orders of this court and with those portions of the Board's prior orders requiring the Committee to do and accomplish certain tasks by specific dates already passed; and (2) whether, if the Committee has not so complied, the Board is entitled to the entry of a decree ordering the Committee to comply with those portions of the Board's prior orders requiring the Committee to do and accomplish certain other tasks by specific dates still in the future. We consider each issue separately.

1. As described in the court's Order of January 16, the Board's December 26 order required the Committee to submit by January 15 proposed modifications to the Plan which would identify alternative facilities to replace the unusable Dorchester High School Annex and Mary Hemenway School building and would provide for a balanced enrollment plan for Districts 12 and 14, its proposals to achieve ''at least as much racial balancing, if implemented, as the Plan,'' but not to ''affect the basic structure of the



Plan;'' this Court found that the Committee's submissions of January 15 did not comply with these portions of the Board's order. In each of its subsequent orders the Board has found that each of the Committee's following submissions has also failed to comply with the requirements of its December 26 order and has ordered further detailed proposed modifications. Upon examination of the Committee's submissions of January 21, February 15, and Mach 11, 1974, we find and rule as follows.

With respect to the issue of the Dorchester High School Annex, we find that the Committee, after identifying several alternative options for a replacement facility in its January 21 submission, did not thereafter make any choice between them, nor did it even address the issue in its subsequent submissions of February 15 and March 11; the programmatic approaches'' suggested in the last submission do not satisfy the Board's order that the Committee identify and designate a building to replace the Dorchester Annex. We therefore find that the Committee has not fully complied with this aspect of the Board's order of December 26, 1973 nor with its subsequent orders of January 28 and March 4, 1974.

With respect to the issues of the Mary Hemenway school building and Districts 12 and 14, we find that the Committee's submission of February 15, 1974 contains a ''detailed proposed modification'' to the Plan, but that the Board, in its orders of March 4 and March 19, 1974, has stated that the Committee's proposal does not provide as much racial balance as would the Plan and that it therefore fails to comply with its orders. The Court is unable to determine on the record before it whether the Committee has or has not complied with the Board's orders. However, our inability to do so is of no present importance, because the Board's order of March 19, 1974 includes its own proposed modification of the plan with respect to the Mary Hemenway and Districts 12 and 14 issues, and the Board

states therein that "[t]he Committee may either approve and endorse this modification or propose a different modification in keeping with past Board Orders, on or before March 25, 1974." This order supplements its previous orders relating to the same issues, and is binding on the Committee.

2. In relation to the Board's prayers for a decree to enforce those portions of its orders which require the Committee to make submissions and to take other actions by certain dates in the future, we note the following.

We have found above that as of March 20, 1974, the date of the hearing on this most recent petition, the Committee had not yet fully complied with this court's Order of January 16, 1974 although full compliance was ordered by January 21, two months before the hearing date. We have also found that the Committee had failed to fully comply with repeated orders of the Board dating at least from December 26, 1973, almost three months before the hearing date. In addition, the documents submitted by the Committee to the Board on January 15, January 21, February 15, and March 11, 1974, in response to the Board's orders, manifest a continued attempt to delay implementation of the Plan. The contents of the Committee's submission of January 15, 1974 are fully described in the Court's Order of January 16; the Committee's submission of January 21, 1974 began with a section entitled "Need for New Data" which repeated the Committee's frequent assertion that it could not properly propose modifications to the Plan until the current "geocoded data" were available; the Committee's submission of February 15, 1974 begins by setting forth a "Counter Proposal" which suggests delaying any implementation of a racial balance plan for Boston until September, 1975; and its submission of March 11, 1974 begins with an expanded and somewhat revised version of this "Counter Proposal" which again suggests delaying implementation until September 1975 in all but the Boston High Schools.



Based on these considerations, the Court holds that the Committee's past conduct in relation to orders of the Board and of the Court gives reason to doubt whether the Committee, unless expressly ordered by the Court to do so, will seasonably comply with the several remaining portions of the Board's order for implementation of the Board ordered racial balance plan in Boston by September 1974. It is therefore hereby ORDERED as follows:

(1) That an Interlocutory Decree be entered in the form which is attached hereto and made a part hereof; and

(2) That the hearing on the pending petition be and it hereby is continued to Tuesday, April 2, 1974, at 4:00 P.M., for the following purposes:

(a) To determine whether the Committee has complied with the Interlocutory Decree being entered by the Court on this date; and, if it has not, what action, if any, should be taken by the Court thereon;

(b) To determine whether the Committee has complied with those portions of the Board's order of December 26, 1973, as modified by its order of March 4, 1974, which require performance or compliance through April 1, 1974; and, if it has not, what action, if any, should be taken by the Court thereon;

(c) To determine whether the Court should enter any further order or decree requiring compliance by the Respondents with those portions of the Board's order of December 26, 1973, as modified which require performance or compliance on any date or dates after April 1, 1974; and

(d) To hear the parties on any other issues which may then require the attention of the Court in these proceedings.

March 22, 1974 .

s/FRANCIS J. QUIRICO
*Associate Justice,*
*Supreme Judicial Court*

PORTION OF EXHIBIT 32, DISTRICT COURT HEARING
ON SOUTH BOSTON HIGH SCHOOL

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## REPORT OF SCHOOL INCIDENTS

(WITNESSES)

SCHOOL South Boston High School

DATE OF REPORT 11/14/75

This form is to be used to report all incidents of an unusual nature and those requiring disciplinary action in school buildings, on school grounds and in outside locations where school sponsored activities are scheduled.

NAME OF PERSON REPORTING THE INCIDENT Ms. Krieger
POSITIONS Teacher in Algebra I Rm. 202

DESCRIPTION OF INCIDENT:
(*Include times, dates, place, names, ages, sex and race*)

202 3rd Period Approximately 9:50 A.M.
William Duwars came about 5 min. late into class (about 9:35). He sat quietly in class, then all of a sudden at 9:50 A.M. I saw William Duwars approach Calvin Greene with a chair in his hand & hit him over the head with it, twice. My back had been turned while writing on the board so I did not see him until he was already at Calvin's back. He sneaked up on him. I screamed "No! No!" & yelled for someone to get a policeman. Duwars backed off & picked up another chair. Calvin ran from the room holding his head. A policeman came in & took William Duwars away. Dr. Reid came right away & Tom Cahill said "Why



wasn't anything done when a nigger hit me with a chair!" Dr. Reid took him to the office also.

As far as I saw Duwars' attack on Greene was completely unprovoked.

MRS. KRIEGER

ACTION TAKEN:

.....

BUILDING ADMINISTRATOR

Prepare in triplicate:
2 copies to Area Superintendent .....
1 copy retained by office .....

INTERIM FORM 9/5/75

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PORTION OF EXHIBIT 33, DISTRICT COURT HEARING
ON SOUTH BOSTON HIGH SCHOOL

NAME C. Moore, Teacher
ADDRESS 174 St. Botolph St., Boston
D.o.B. 7-7-47 AGE 28
STUDENT'S NAME OR LEGAL GUARDIAN .....
TIME OF INCIDENT 8:10 A.M. DATE 10-17-75
PLACE OF INCIDENT HR 115

DESCRIPTION OF INCIDENT PER INDIVIDUAL:

At 8:10 A.M. approx. twenty 20 white male students entered my homeroom, #115 and physically attacked three 3 black male students — Eddie Harris, Alvin McKinnon, and Dereck Polk. Of the 20 white males, I knew only two 2 *Robert Mulvaney* and *Robert Pearson.* The students entered and without words began striking McKinnon, then the wave of white students joined the fighting. The students were overturning chairs and tables as they fell to the floor

fighting. The fight was broken up by aides and policemen. Aside from the 3 blacks the only other person in HR 115 prior to the fight was Rafael Calderon.

C. Moore

Routing

Interviewed by ..... Nurse .....
Individual Folder ..... Incident Folder .....
Home Phone Called .....
Desk Card .....
Case No. .....
Suspension ..... Date ..... Page No. .....

Office Use Only 2 Copies

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## Excerpt From District Court Order on Motion For Relief Concerning Security, December 12, 1974

United States District Court
District of Massachusetts

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Civil Action No. 72-911-G

Tallulah Morgan Et Al.,
plaintiffs,
*v.*
John J. Kerrigan Et Al.,
defendants.

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### ORDER ON MOTION FOR RELIEF CONCERNING SECURITY
December 17, 1974

Garrity, J.

After hearing it is ORDERED that:

• • •

4. The defendants school committee and superintendent shall promulgate as part of the code of discipline and enforce with appropriate sanctions rules prohibiting any student while in school or on school property from communicating racial slurs or epithets, e.g., "nigger" and "white trash", which would by their very utterance inflict injury or tend to incite an immediate breach of the peace or would provoke the average student to retaliation. See *Chaplinsky* v. *New Hampshire*, 1942, 315 U.S. 568.

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